

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**TENNESSEE HIGHER EDUCATION COMMISSION**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission, hereinafter referred to as "THEC" or "State" and Contractor Legal Entity Name ("Contractor"), is for the provision of Laserfiche Document Management System, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.

Contractor Place of Incorporation or Organization: Location

Contractor Edison Registration ID # Number

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. Closing or Closed Institution: An institution authorized by THEC that is in the process of closing or has closed and will no longer have a physical presence in Tennessee.
- b. Development and Enhancement Assessment Plan (Plan): A plan that provides an overview of any improvements, enhancements, security, disaster protocols, or other implementations that should be addressed along with a proposed timeline. The Plan is to be submitted to DPSA by the Contractor as outlined in Section A.6.
- c. Disaster: An incident which disrupts or threatens to disrupt business continuity as described in Section E.7.(d).
- d. Division of Postsecondary State Authorization (DPSA): A division of THEC, charged with providing for the protection, education, and welfare of the citizens of Tennessee, its postsecondary educational institutions, and its students under Tenn. Code Ann. § 49-7-2001, et. seq. and implementing the State Authorization Reciprocity Agreement (SARA) in Tennessee as provided for in Tenn. Code Ann. § 49-7-1501, et. seq., for which DPSA is a portal agency.
- e. Fidelity National Information (FIS): the third-party vendor for DPSA's online application payments through their standard browser-based payment application.
- f. Full Users: Employees of DPSA who are given authorization to access the Laserfiche DMS.
- g. Internet Information Services (IIS): an extensible web server created by Microsoft for use with the Windows NT family. IIS supports HTTP, HTTP/2, HTTPS, FTP, FTPS, SMTP, and NNTP.
- h. Laserfiche Document Management System (DMS): stores documents related to the authorization of approximately three-hundred twenty (320) institutions, approval of three thousand eight hundred (3,800) programs, and the student transcripts for Closing and Closed Institutions. The LaserFiche DMS can be accessed through a desktop software application or through a web server.
- i. Open Database Connectivity (ODBC): a standard application programming interface for accessing database management systems.

- j. Official Transcript: Student transcript from a Closing or Closed Institution which meets the standards forth by DPSA.
  - k. Personally Identifiable Informaiton ("PII"): PII includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time and personally identifiable information and other data protected under any other applicable laws, rules or regulation of any jurisdiction relating to disclosure or use of personal information.
  - l. POSTSEC Database: An Oracle database designed to catalog information on postsecondary educational institutions subject to authorization pursuant to Tenn. Code Ann. § 49-7-2001, et. seq. The database also contains other information, including information on complaints, unauthorized institutions, and members of the Committee on Postsecondary Educational Institutions. Currently, the POSTSEC Database and the server on which it runs are maintained by STS.
  - m. Records Disposition Authorization (RDA): outlines the retention period for a particular record, the proper method of retention, and the proper method of destruction at the end of the retention period and has been approved by the State of Tennessee's Public Records Commission.
  - n. State Authorizsation Reciprocity Agreement (SARA): An agreement among member states, including Tennessee, which establishes comparable national standards for interstate offering of postsecondary distance education courses and programs.
  - o. Secure: That which is locked or protected in such a way tha tit can only be accessed by those individuals given the proper authorization by DPSA or Contractor and who have been trained on Family Educational Rights and Privacy Act (FERPA), the handling of PII, and the notice requirements of this Contract.
  - p. Secure Sockets Layer (SSL): A protocol developed for sending information securely over the internet.
  - q. SQL Server: Microsoft relational database software
  - r. Structured Query Language (SQL): A programming language that is typically used in relational database or data stream management systems.
  - s. STS: State of Tennessee's Strategic Technology Solutions
  - t. Transport Layer Security (TLS): a method of encrypting web browser communications that supersedes SSL.
  - u. Website: Web server used to access Laserfiche DMS.
- A.3. Purpose. Under this Contract, the Contractor will be responsible for supporting, enhancing, and assisting with the Laserfiche DMS. This includes assisting DPSA in managing, scanning, and indexing applications or forms filed by postsecondary educational institutions; obtaining, processing, and electronically storing Official Transcripts from Closing or Closed Institutions; assisting with the administration of user protocols; providing annual maintenance and support of the Laserfiche Avante Product Suite and modules; providing support in coordination with STS as required, and providing optional development and enhancements to the Laserfiche DMS.
- A.4. Official Transcripts. The Contractor shall, when necessary depending on the circumstances of a Closing or Closed Institution:

- a. Travel to a Closing or Closed Institution within the State of Tennessee or out-of-state within forty-eight (48) hours of DPSSA notifying the Contractor of a Closing or Closed Institution that has indicated there will be a limited time-frame in which paper Official Transcripts will be available and the scope of transcripts needed.
- b. Meet with the register or other official(s) responsible for Official Transcripts at the Closing or Closed Institution and develop a plan for taking possession of the Official Transcripts.
- c. Work with institutional officials and information technology personnel to ensure that the Closing or Closed Institution is prepared to provide Official Transcripts in the format and with the content required to meet and comply with DPSSA's standards of an official student transcript, which will be provided to the Contractor prior to meeting with the Closing or Closed Institution.
- d. Take physical possession of the Closing or Closed Institution's Official Transcripts at the earliest possibility.
- e. Ensure secure transport of the Official Transcripts, if applicable, to the Contractor's document processing center.
- f. Process the transcripts no later than fourteen (14) days after obtaining the Official Transcripts, unless otherwise agreed upon by DPSSA, as follows:

(1) Paper Official Transcripts:

- i. Paper Official Transcripts are Official Transcripts provided to Contractor in paper form by DPSSA or obtained in paper form by Contractor on DPSSA's behalf.
- ii. Review Official Transcripts for completeness and prepare for document scanning by removing staples, bindings, notes, other objects restricting a high quality, unobstructed scan.
- iii. Scan the front and back of each Official Transcript page into the Laserfiche DMS, in either black and white or compressed color depending on the features of the original transcript, ensuring that each scanned image is equal to or surpasses the quality of the original transcript.
- iv. Combine pages for the same student into one document and index each Official Transcript with the following metadata, as applicable and as requested by DPSSA:
  1. Last Name;
  2. First Name;
  3. Middle/ Maiden Name;
  4. Social Security Number/ SSN4;
  5. Date of Birth;
  6. Institution Name; and
  7. Student ID.
- v. Create a name for each Official Transcript document in the following format : [Last Name], [First Name], [Middle/ Maiden Name], [SSN4], and [Institution Name].
- vi. Review all processed Official Transcripts for quality control to identify and correct image quality errors, data entry, or metadata errors.

(2) Digital Official Transcripts:

- i. Digital Official Transcripts are Official Transcripts provided to DPSSA by the Closed or Closing Institution in an electronic format, such as PDF, or uploaded to Laserfiche DMS by DPSSA in an electronic format, such as PDF.

- ii. Determine if the submitted electronic format, imported into the Laserfiche DMS by DPSA, if not PDF, is compatible and able to be converted into a compressed TIFF file, the native storage format for the Laserfiche DMS.
    - iii. Review to ensure that the digital file does not display a watermark that says "void" or "not official," a security characteristic of the Official Transcript paper, which is displayed when the Official Transcript is copied or scanned, and cannot be accepted on the received Official Transcripts.
    - iv. Combine pages for the same student into one document and index each Official Transcript with the following metadata, as applicable and as requested by DPSA:
      - 1. Last Name;
      - 2. First Name;
      - 3. Middle/ Maiden Name;
      - 4. Social Security Number/ SSN4;
      - 5. Date of Birth'
      - 6. Institution Name; and
      - 7. Student ID
    - v. Create a name for each Official Transcript document in the following format: [Last Name], [First Name], [Middle / Maiden Name], [SSN4], and [Institution Name].
    - vi. Review all processed Official Transcripts for quality control to identify and correct image quality errors, data entry, or metadata errors.
  - g. Store paper Official Transcripts in a secure location for ninety (90) calendar days to ensure that the original paper Official Transcript is available for recovery if discrepancies or errors are suspected in the processed Laserfiche DMS transcript. Contractor shall notify DPSA forty-eight (48) hours prior to destruction to ensure no discrepancies have been discovered. Additionally, Contractor will provide DPSA with a certificate of destruction demonstrating that the Official Transcripts have been destroyed by either shredding in the case of paper Official Transcripts or in accordance with Section E.7.(a)(6) for digital transcripts within ten (10) business days of their destruction.
    - (1) Contractor must ensure strict compliance with all FERPA requirements and immediately disclose to DPSA any request for Official Transcript information from a person or entity other than DPSA.
    - (2) DPSA requires data at rest and in-transit to be encrypted as outlined in Section E.7.(a)(2).
    - (3) Contractor should ensure all employees with access to Official Transcripts received, processed, and stored under this Contract are trained on FERPA requirements and the handling of PII, including requirements under this Contract outlined in Sections A.9., E.8., and E.10.
  - h. The Contractor shall be available for conference calls, online meetings, or on-site meetings, as requested by DPSA.
- A.5. Laserfiche DMS Administration. The Contractor shall provide administrative support for the following Laserfiche DMS functions as follows:
- a. Manage the secure role-based access authorization levels of DPSA Full Users so that Full Users can access, open, and archive files and generate reports using relevant index information.
  - b. Manage routine repository maintenance and organization through templates and indexing.
  - c. Manage Laserfiche DMS annual support payments for Laserfiche DMS Full Users and modules currently installed.

- d. Manage the purchase and installation of optional development and enhancements options, as noted in Section A.8.
- e. Manage the Laserfiche DMS annual support payments for optional development and enhancement as noted in Section A.8.
- f. Be available for conference calls, online meetings, and on-site meetings, as requested by DPSA.

A.6. Development and Enhancement Assessment. The Contractor shall provide a Development and Enhancement Assessment Plan (Plan) to DPSA no later than forty-five (45) calendar days after the effective date of the Contract. The Plan shall be electronically maintained and shall detail all aspects of proposed implementation, including target dates for key deliverables to be completed. Contractor and DPSA shall meet according to DPSA's availability to assist Contractor's development of the Plan. The Plan shall include, as applicable:

- a. An assessment of the current Laserfiche DMS applications and forms, repository structure, workflows, business processes, and records management;
- b. Identification of enhancements, if any, needed to improve the efficiency of current Laserfiche DMS applications and forms, repository structure, workflows, business processes, and records management;
- c. Expected maintenance structure and reporting periods;
- d. Schedule of meetings and key business guidelines for communication between Contractor and DPSA.
- e. Automation of the Laserfiche DMS Record Management Module to provide for the purging of records according to an approved state RDA once records have reached the end of their retention period.
- f. Creation of additional electronic applications or forms similar to those currently in use and suggested enhancements thereof.

Upon receipt of the Plan, DPSA will identify areas of agreement and enhancement to be completed. Thereafter, the Contractor will accept the Plan, make the necessary updates, and submit to DPSA the updated Plan for review and approval. Upon approval, the Contractor shall assume ongoing maintenance responsibilities for the Plan in coordination with DPSA. The Contractor will report on the project progress to DPSA, as determined in the Plan. This report will detail completed, usable, functional aspects of the project and implementation plans including optional development and enhancements.

A.7. Process for Implementing Optional Functional Design Enhancements. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in the Contract.

- a. Change Order Creation. After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
  - (1) The effect, if any, of implementing the requested change(s) on all other services required under this Contract;
  - (2) The specific effort involved in completing the change(s);
  - (3) The expected schedule for completing the change(s);

- (4) The maximum number of person hours required for the change(s); and
- (5) The maximum cost for the change(s) – this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional services until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereb, as part of this Contract.

- b. Change Order Performance. Subsequent to creation of Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Change Order Remuneration. The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., provided that, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the state be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

A.8. Laserfiche DMS Support and Maintenance. The Contractor shall be available for support and maintenance of the Laserfiche DMS as follows:

- a. Ensure that the latest Laserfiche DMS software is installed.
- b. Ensure that the latest Laserfiche DMS vulnerability patches and security updates are promptly applied.
- c. Respond to DPSA service calls within four (4) hours Monday – Friday, 08:00 a.m. – 06:00 p.m. (CST/CDT), to answer operating questions or to resolve system problems.
- d. Work with Laserfiche corporate support when Laserfiche DMS or software problems cannot be resolved locally.
- e. Provide scheduled training for usage of the Laserfiche DMS establishing workflow or indexing, processing, and uploading records received in any format to DPSA employees as needed.
- f. Work with FIS, including but not limited to, onboarding new application payment transactions, resolve technical issues, as applicable, and ensure compatibility with server and product upgrades.
- g. Work with STS personnel to establish secure remote access to the virtual Windows server running the Laserfiche DMS in the State of Tennessee computer center using a method specified by the State.
- h. Work with THEC information technolog personnel to ensure that Full Users are trained on the usage of the Laserfiche DMS and that all security policies and procedures outlined in this Contract are in place and followed accordingly.

- i. In the case of a Disaster, reinstall the Laserfiche DMS software and restore the Laserfiche DMS system images and metadata back to its state as of the last backup performed by STS.
- j. Ensure timely occurrence of the following to maintain performance of the Laserfiche DMS on the State's server:
  - (1) Install SQL Server, as well as updated and troubleshoot as necessary;
  - (2) Configure Website with IIS;
  - (3) Bind TSL certificate to Website;
  - (4) Maintain SQL Server ODBC connection;
  - (5) Notify DPSA promptly if additional file space or hardware upgrade is needed;
  - (6) Work with DPSA and STS to complete disaster recovery plan for Laserfiche DMS; and
  - (7) Coordinate with STS for regular disaster recovery testing as outlined in Section E.7.(d).
- k. Technical specifications for Laserfiche DMS include:
  - (1) Laserfiche current version – Server, Client, and Web Client, currently Version 10.4.;
  - (2) Laserfiche Active Directory Integration; is a Windows authentication feature that gives licensed users a single sign-on access to services.
  - (3) Client and web communications using TLS 1.2 (or higher);
  - (4) Windows 2019 or the current state standard and supported product versions; and
  - (5) Implementation and maintenance of Laserfiche application and data encryption.

A.9. Unauthorized Access to or Disclosure of PII or FERPA Records. Contractor shall notify DPSA within twenty-four (24) hours of any suspected or actual unauthorized access to or disclosure of any PII or FERPA records under this Contract. Contractor shall provide no cost credit monitoring services for individuals whose PII was affected by any unauthorized disclosure, including individual letters and public notice. The obligations set forth in this Section shall survive the termination of this Contract.

A.10. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.11. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on September 1, 2021 ("Effective Date") and ending on August 31, 2022 ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
<b>TRANSCRIPT SERVICES</b>	
Consultation Rate for Meetings with Closing Institutions, if applicable (A.4.)	\$ Amount / Hour



Prepare and Scan Paper Transcripts (A.4.)	\$ Amount / Image
Index Paper Transcripts (A.4.f.(1))	\$ Amount / Index
Destruction of Original Paper Transcripts (A.4.f.(1))	\$ Amount / Cu. Ft.
Index Digital Transcripts (A.4.g.)	\$ Amount / Image
Training (A.8.)	\$ Amount / Hour
<b>LASERFICHE AVANTE PRODUCT SUITE ANNUAL SUPPORT, AS CURRENTLY INSTALLED AS OF 05/31/2021</b>	
<b>Server Modules</b>	
Avante Server for SQL Express with Workflow	\$ / ANNUALLY
Records Management Module	\$ / ANNUALLY
Avante Forms Portal	\$ / ANNUALLY
<b>User Specific Modules</b>	
Twelve (12) Laserfiche Named Full User with: <ul style="list-style-type: none"> <li>- Web Client, Mobile, Snapshot, Email</li> <li>- Laserfiche Forms Professional</li> <li>- Laserfiche Connector</li> <li>- Laserfiche Digital Signature</li> </ul>	\$ / ANNUALLY
<b>DOCUMENT PROCESSING MODULES</b>	
Laserfiche Quick Fields * 2	\$ / ANNUALLY
Laserfiche Zone OCR and Validation Package * 2	\$ / ANNUALLY
Real Time Lookup and Validation Package * 2	\$ / ANNUALLY
Scan Connect Scanner Driver	\$ / ANNUALLY
<b>LASERFICHE AVANTE PRODUCT SUITE DEVELOPMENT AND ENHANCEMENT OPTIONS</b>	
<b>SERVER MODULES</b>	
Avante Server for Microsoft SQL with Workflow	\$ / EA
Laserfiche Public Portal – Starter	\$ / EA
Quick Fields Agent	\$ / EA
<b>USER SPECIFIC MODULES</b>	
Laserfiche Named Full User with <ul style="list-style-type: none"> <li>- Web Client, Mobile, Snapshot, Email</li> <li>- Laserfiche Forms Professional</li> </ul>	\$ / EA

<ul style="list-style-type: none"> <li>- Laserfiche Connector</li> <li>- Laserfiche Digital Signature</li> </ul>	
<b>DOCUMENT PROCESSING MODULES</b>	
Laserfiche Quick Fields	\$ / EA
Laserfiche Zone OCR and Validation Package	\$ / EA
Real Time Lookup and Validation Package	\$ / EA
Scan Connect Scanner Driver	\$ / EA
Laserfiche Quick Fields Forms with: <ul style="list-style-type: none"> <li>- Zone OCR and Validation</li> <li>- Document Classification</li> <li>- Optical Mark Recognition</li> <li>- Forms Alignment</li> <li>- Form Extractor</li> </ul>	\$ / EA
<b>LASERFICHE AVANTE PRODUCT SUITE ANNUAL SUPPORT DEVELOPMENT AND ENHANCEMENT OPTIONS</b>	
<b>SERVER MODULES</b>	
Avante Server for Microsoft SQL with Workflow	\$ / ANNUALLY
Laserfiche Public Portal – Starter	\$ / ANNUALLY
Quick Fields Agent	\$ / ANNUALLY
<b>USER SPECIFIC MODULES</b>	
Laserfiche Named Full User with <ul style="list-style-type: none"> <li>- Web Client, Mobile, Snapshot, Email</li> <li>- Laserfiche Forms Professional</li> <li>- Laserfiche Connector</li> <li>- Laserfiche Digital Signature</li> </ul>	\$ / ANNUALLY
<b>DOCUMENT PROCESSING MODULES</b>	
Laserfiche Quick Fields	\$ / ANNUALLY
Laserfiche Zone OCR and Validation Package	\$ / ANNUALLY
Real Time Lookup and Validation Package	\$ / ANNUALLY
Scan Connect Scanner Driver	\$ / ANNUALLY
Laserfiche Quick Fields Forms with: <ul style="list-style-type: none"> <li>- Zone OCR and Validation</li> <li>- Document Classification</li> <li>- Optical Mark Recognition</li> <li>- Forms Alignment</li> <li>- Form Extractor</li> </ul>	\$ / ANNUALLY

- Forms Identification	
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- c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.7., without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section A.7., PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed seven percent (7%) of the sum of milestone payment rates detailed in Section C.3.b. above (which is the total cost for the milestones and associated deliverables set forth in the Contract Sections A.2. through A.8.). If, at an point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
DMS Administration, Support, and Optional Functional Design Development and Enhancements (A.7.)	\$ Amount / Hour
<b>NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.</b>	

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided by email to [Julie.Woodruff@tn.gov](mailto:Julie.Woodruff@tn.gov) and [Marcie.Mills@tn.gov](mailto:Marcie.Mills@tn.gov).

Tennessee Higher Education Commission  
Division of Postsecondary State Authorization  
312 Rosa L. Parks Ave., 9th Floor  
Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Tennessee Higher Education Commisison (THEC), Division of Postsecondary State Authorization (DPSA);
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;

- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All

communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Stephanie Bellard Chase, Associate Executive Director for Postsecondary State Authorization  
Tennessee Higher Education Commission  
312 Rosa L. Parks Ave.  
9<sup>th</sup> Floor, TN Tower  
Nashville, TN 37243  
[Stephanie.Bellard@tn.gov](mailto:Stephanie.Bellard@tn.gov)  
Telephone: 615.532.7495

Julie Woodruff, Assistant Executive Director of Postsecondary State Authorization and Lead Attorney  
Tennessee Higher Education Commission  
312 Rosa L. Parks Ave.  
9<sup>th</sup> Floor, TN Tower  
Nashville, TN 37243  
[Julie.Woodruff@tn.gov](mailto:Julie.Woodruff@tn.gov)  
Telephone: 615.253.8857

THEC Fiscal:

Jason Cavender, Chief Financial Officer  
Tennessee Higher Education Commission  
312 Rosa L. Parks Ave.  
9<sup>th</sup> Floor, TN Tower  
Nashville, TN 37243  
[Jason.Cavender@tn.gov](mailto:Jason.Cavender@tn.gov)  
Telephone: 615.532.8303

The Contractor:

Contractor Contact Name & Title  
Contractor Name  
Address  
Email Address  
Telephone # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.
- In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.
- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.



- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
- The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.
- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workarounds or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues

to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to 33201-02822 (Attachment A) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.5. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.6. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than

as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.7. Contractor Hosted Services Confidential Data, Audit, and Other Requirements.

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.

- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:  
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 24 hours
    - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 24 hours
  - (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- E.8. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, et seq., known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

- E.9. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract,



including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

- E.10. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**TENNESSEE HIGHER EDUCATION COMMISSION:**

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**DR. EMILY HOUSE, EXECUTIVE DIRECTOR**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**